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 INGERSOLL-RAND COMPANY and INGERSOLL-RAND
 INDUSTRIAL REFRIGERATION, INC.

2011 JUL -8 PM 1:45
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 RIVERSIDE

FILED

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ED CV11-01065VAP (DTB)

TOM EVANS,

Plaintiff,

vs.

INGERSOLL-RAND COMPANY;
 INGERSOLL-RAND INDUSTRIAL
 REFRIGERATION, INC.; and DOES 1 through
 20, INCLUSIVE,

Defendants.

NOTICE OF REMOVAL OF
 ACTION TO THE UNITED
 STATES DISTRICT COURT FOR
 THE CENTRAL DISTRICT OF
 CALIFORNIA under U.S.C. § 1441
 (b) (DIVERSITY)

(Filed concurrently with Civil
 Cover Sheet, Declaration of Jorge
 Martinez, Declaration of Nikki
 Wilson, Declaration of Scott
 Tuskiewicz, Notice of Interested
 Parties, and Certificate Of Service
 Of Notice To Adverse Party Of
 Removal To Federal Court And
 Related Documents)

CASE NO.:

1

NOTICE OF REMOVAL OF ACTION (DIVERSITY)

COPY

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendants INGERSOLL-RAND COMPANY and
4 INGERSOLL-RAND INDUSTRIAL REFRIGERATION, INC. ("Defendants") hereby
5 invoke this Court's jurisdiction under the provisions of 28 U.S.C. §§ 1332 and 1441 (b)
6 and remove this action from state court to federal court pursuant to 28 U.S.C. § 1446(b)
7 In support thereof, Defendants assert:

8
9 1. On February 8, 2011, Plaintiff Tom Evans (hereinafter "Plaintiff") Plaintiff filed an
10 Unverified Complaint in the Superior Court of the State of California for the County of
11 San Bernardino, entitled "*Tom Evans, an individual, Plaintiff, v. Ingersoll-Rand*
12 *Company; Ingersoll-Rand Industrial Refrigeration, Inc.; and DOES 1 thorough 20,*
13 *Inclusive, Defendants*" and designated as Case No. CIVRS 1101387 (the "Complaint").

14 2. On April 6, 2011, Plaintiff served the Summons and the Complaint. The state
15 court scheduled a case management conference for July 8, 2011. A true and correct
16 copies of the Complaint is attached hereto as Exhibit "A."

17 3. On May 6, 2011, Defendants filed their Answer to the Action, a true and correct
18 copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

19 4. The Action purports to allege five causes of action against Defendants for (1) Age
20 Discrimination, (2) Race/National Origin Discrimination, (3) Failure to Prevent
21 Discrimination in Violation of Government Code §12940, (4) Intentional Infliction of
22 Emotional Distress, and (5) Termination in Violation of Public Policy.

23 5. No other defendants are named in this Action and Defendants are informed and
24 believe that no other defendants have been served with process in this Action.

25 6. The attached Exhibits "A", "B". "E", and "F" constitute all the documents filed in
26 this matter as of the date of filing this Notice of Removal.

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CASE NO.:	2	NOTICE OF REMOVAL OF ACTION (DIVERSITY)
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7. The Action is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

DIVERSITY JURISDICTION

8. At the time the Action was commenced, Plaintiff and Defendant Ingersoll-Rand Company [IR] were citizens of different states, as required for removal under 28 U.S.C. §1332. Defendants are informed and believe and thereon allege that Plaintiff was, at the time of the filing of the Action and at the time of removal, a resident and citizen of the State of California, having both residence in the County of Orange and the intent to have his true, fixed home and principal establishment in the State of California. (*See* Complaint, Exhibit A, page 7, ¶22).

9. IR is an Irish public limited company with offices in Dublin, Ireland with its principal place of business in Davidson, North Carolina. Ingersoll-Rand Company Fact Sheet, *available at* <http://company.ingersollrand.com/aboutus/Pages/default.aspx> *See* Declaration of Scott Tuskiewicz ("Tuskiewicz Decl."), ¶ 4, Ex. A. Accordingly, Ingersoll-Rand Corporation is a citizen of Ireland and North Carolina. 28 U.S.C. § 1332(a)(1); *See Hertz v. Friend*, 130 S. Ct. 1181 (2010).

10. Plaintiff was at all times an employee of Ingersoll-Rand Company and Hussmann Corporation:

a. There is a rebuttable presumption that the "employer," for purposes of an action under the FEHA (Government Code section 12940 et seq.) is the person or entity identified as the employer on the employee's Federal Form W-2. *Government Code* § 12928.

b. Plaintiff's IRS Forms W-2 identifies his employer as "Ingersoll Rand Financial, Agent for: Ingersoll-Rand Climate." [Declaration of Jorge Marquez "Marquez

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Decl.” ¶6, Exh. A.] Ingersoll Rand Financial has no employees. [Tuszkiewicz Decl. ¶5]
 It is simply a payrolling entity that issues paychecks to all IR employees. [Id.] Likewise,
 Ingersoll-Rand’s Climate Control Sector is not a separate legal entity; rather, it is an
 unincorporated division of IR. [Id.]

c. At the time of his termination, Plaintiff was a member of the Southern
 California Pipe Trades District Council 16 on Behalf of its Affiliated U.A. Local Union
 250 [“Local 250”] [Marquez Decl. ¶7, Exh. B]

d. Local 250 signed a collective bargaining agreement [CBA] on behalf of the
 Local 250 members working in the manufacturing operations located at 13770 Ramona
 Ave., Chino, California. [Marquez Decl. ¶8, Exh. C] The CBA identified Hussmann
 Corporation as the employer of those Local 250 members working at the manufacturing
 operation located at 13770 Ramona Ave., Chino, California. [Marquez Decl. ¶¶8, 9, Exh.
 C]

e. Plaintiff worked at the manufacturing operation located at 13770 Ramona
 Ave., Chino, California. [Marquez Decl. ¶9]

f. Hussmann Corporation is a business of IR. [Tuszkiewicz Decl. ¶6] The
 CBA is signed on behalf of Hussmann Corporation by Larry Parson, Vice President
 Employee & Labor Relations, Climate Control Sector, Ingersoll-Rand. [Marquez Decl.,
 ¶8, Exh. C]

11. Hussmann Corporation is incorporated in Missouri with its headquarters also
 located in Missouri. [Tuszkiewicz Decl. ¶ 6]

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

12. In determining whether the amount in controversy exceeds \$75,000, the Court
 must presume Plaintiff will prevail on each and every one of his claims and aggregate the
 damages for each claim. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199
 F. Supp. 993, 1001 (C.D. Cal. 2002), citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092,

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1 1096 (11th Cir. 1994) (the amount in controversy analysis presumes that “plaintiff
2 prevails on liability”).

3 13. For unspecified claims, the court should not look to the low end of the possible
4 range of recovery, but make a reasonable assessment of the rights being litigated. *Angus*
5 *v. Shiley Inc.* (3d Cir.1993) 989 F.2d 142, 146.

6 14. The amount in controversy may include general and special compensatory
7 damages and attorney’s fees that are recoverable by statute. *Galt G/S v. JSS Scandinavia*,
8 142 F.3d 1150, 1155-56 (9th Cir. 1998). The Court may examine the nature of the action
9 and the relief sought, and take judicial notice of awards in similar cases. *See, e.g.*,
10 *Simmons v. PCR Technology* (N.D. Cal. 2002) 209 F. Supp.2d 1029, 1035 (noting that
11 attorney fees in individual employment cases often exceed damages).

12 15. Defendants have a reasonable good faith belief that Plaintiff seeks damages in
13 excess of the jurisdictional amount of this Court (\$75,000.00) in the Action;
14 notwithstanding the fact the Complaint does not specify the dollar amount of damages
15 being sought.

16 a. On May 6, 2011, Defendants served Plaintiff with a request for statement of
17 damages, a true and correct copy of which is attached hereto as Exhibit “C” and
18 incorporated herein by this reference.

19 b. On June 9, 2011, Plaintiff served Defendants with his Response to
20 Defendants’ Request for Statement of Damages, a true and correct copy of which is
21 attached as Exhibit “D.” Plaintiff alleges lost income and benefits in the amount of
22 \$135,333.33, mental and emotional distress damages in the amount of \$125,000, and
23 damages for the violation of Government Code and Public Policy in the amount of
24 \$85,000. In diversity cases where the amount in controversy is in dispute, a reviewing
25 court may look beyond allegations in the complaint and consider other evidence relevant
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1 to the amount in controversy at the time of removal. *Valdez v. Allstate Ins. Co.* (9th Cir.
2 2004) 372 F.3d 1115, 1117.

3 c. Counsel's representation is a specific fact supporting the finding that the
4 potential damages satisfy the jurisdictional minimum. See *Ajimatarrareje v.*
5 *Metropolitan Life Ins. Co.* (N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 7339, at *4, n. 3.

6 d. Plaintiff also seeks punitive damages in an unspecified amount. [Exh. "D"
7 pg. 2, Ins. 6.] Punitive damages are also included in calculating the amount in
8 controversy. *Davenport v. Mutual Ben. Health & Acc. Ass'n* (9th Cir. 1963) 325 F.2d
9 785, 787; see also *Aucina v. Amoco Oil Co.* (S.D. Iowa 1994) 871 F.Supp. 332. The
10 potential punitive damage award against defendants such as IR alone may satisfy the
11 amount in controversy. Although Defendants vigorously deny Plaintiff's allegations, if
12 Plaintiff were to prevail, the punitive damages alone could exceed the \$75,000
13 jurisdictional minimum.

14 e. Accordingly, Plaintiff's allegations satisfy the jurisdictional prerequisite for
15 amount in controversy as it cannot be said to a legal certainty that Plaintiff would not be
16 entitled to recover the jurisdictional amount. *Anthony v. Security Pacific Financial*
17 *Services, Inc.* (7th Cir. 1996) 75 F.3d 311, 315; *Watson v. Blankinship* (10th Cir. 1994)
18 20 F.3d 383, 386-387. In *Aucina v. Amoco Oil Co.*, the defendant-employer established
19 the amount in controversy exceeded the jurisdictional minimum where the former
20 employee asserted claims for lost wages, lost benefits, mental anguish, and punitive
21 damages. The court noted that the defendant was a Fortune 500 Company, and that
22 "[b]ecause the purpose of punitive damages is to capture a defendant's attention and deter
23 others from similar conduct" the plaintiff's claim for punitive damages "might alone"
24 exceed the jurisdictional minimum. *Aucina*, 871 F.Supp. at 334.

25 f. Plaintiff's claim for attorney fees provides an independent basis for
26 concluding that the amount in controversy exceeds \$75,000. The measure of fees should
27

28 CASE NO.:	6	NOTICE OF REMOVAL OF ACTION (DIVERSITY)
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1 be the amount that can reasonably be anticipated over the course of the litigation, not
 2 merely those already incurred. *Simmons v. PCR Technology, supra*, 209 F. Supp.2d at
 3 1034-1035. Plaintiff's lead attorney Eric V. Luedtke, Esq. was admitted to practice in
 4 California in 1994. See California State Bar website for Mr. Luedtke's member
 5 information at <http://members.calbar.ca.gov/fal/Member/Detail/172360>. Defendants'
 6 attorney, Nikki Wilson has represented employers in employment litigation for
 7 approximately 9 years in California, and is familiar with fees requested by plaintiff's
 8 counsel in similar actions filed in California state and federal courts alleging Fair
 9 Employment and Housing Act violations and related claims. Based on Mr. Luedtke's
 10 experience and the allegations in Plaintiff's complaint, it would not be unreasonable to
 11 expect that Plaintiff's attorney fees will exceed the sum of \$75,000.

12 16. Based on Plaintiff's allegations in the Complaint, and for the reasons stated in the
 13 preceding paragraph, the amount in controversy herein is greater than \$75,000.

14 REMOVAL JURISDICTION AND VENUE

15 17. This Notice of Removal is filed within thirty (30) days after Defendants were first
 16 served with Plaintiff's Response to Defendants' Request for Statement of Damages,
 17 which identified that the amount in controversy exceeded \$75,000 and is therefore filed
 18 within the time period mandated by 28 U.S.C. § 1446(b).

19 18. Venue lies in the United States District Court for the Central District of California
 20 pursuant to 28 U.S.C. Section 1391(a) and 1441(a) because the state action was filed in
 21 this District and this is the judicial district in which the action arose.

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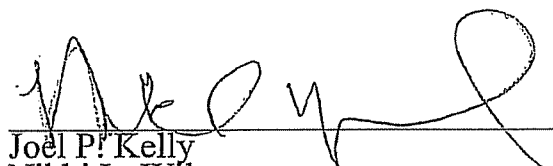
28 CASE NO.:	7	NOTICE OF REMOVAL OF ACTION (DIVERSITY)
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1 WHEREFORE Defendants Ingersoll-Rand Corporation and Ingersoll-Rand
2 Industrial Refrigeration, Inc. pray that the above-action now pending against them in the
3 Superior Court of the State of California, County of San Bernardino, be removed
4 therefrom to this Court.

5
6
7 DATED: July 8, 2011

JACKSON LEWIS LLP

8
9 By:


Joel P. Kelly
Nikki L. Wilson

10
11 Attorneys for Defendants
12 INGERSOLL-RAND COMPANY and
13 INGERSOLL-RAND INDUSTRIAL
14 REFRIGERATION, INC.

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NOTICE OF REMOVAL OF ACTION (DIVERSITY)

EXHIBIT A

1 ERIC V. LUEDTKE, ESQ. - STATE BAR #172360
2 LAW OFFICES OF ERIC V. LUEDTKE
3 3230 E. Imperial Highway, Suite 208
4 Brea, California 92821
5 Telephone No. (714) 579-1700
6 Facsimile No. (714) 579-1710

7
8 Attorneys for Plaintiff,
9 Tom Evans

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

FEB 08 2011

BY Jaime A. Lujan
DEPUTY

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN BERNARDINO

13 TOM EVANS,

14 Plaintiff,

15 vs.

16 INGERSOLL-RAND COMPANY;
17 INGERSOLL-RAND INDUSTRIAL
18 REFRIGERATION, INC.; and DOES
19 1 through 20, Inclusive,
20 Defendants.

CASE NO.:

CMS 11-03307

COMPLAINT

- 1) Discrimination Against Age
- 2) Discrimination Against Race/National Origin
- 3) Violation of Government Code §12940
- 4) Intentional Infliction of Emotional Distress
- 5) Termination in Violation of Public Policy

DEPT:

Trial Date: None

21
22 Plaintiff alleges as follows:

23 FACTS COMMON TO ALL CAUSES OF ACTION

24 1. Plaintiff, Tom Evans (hereinafter "Plaintiff"), was
25 employed with Defendants INGERSOLL-RAND COMPANY and INGERSOLL-
26 RAND INDUSTRIAL REFRIGERATION, INC. and its subsidiaries
27 (hereinafter "Defendants") for almost 15 years. Defendants are
28

1 corporations doing business in the State of California, County of
 2 San Bernardino, city of Chino. All of the employment practice
 3 complained of herein took place in the city of Chino, County of
 4 San Bernardino, State of California.

5 2. The decision to ultimately terminate Plaintiff was made
 6 by Defendants. Plaintiff was hired on or about March 17, 1994.
 7 At the time of termination Plaintiff's official title was Quality
 8 Control Inspector. In a continuing effort to discriminate and
 9 harass Plaintiff, Defendants allowed a Jose Rodriguez to
 10 discriminate against Plaintiff and other anglo-american workers.
 11 Jose Rodriguez repeatedly asked Plaintiff when he was going to
 12 retire. When Plaintiff finally indicated that he planned to work
 13 until he was 67, Jose Rodriguez took his office away from him and
 14 put a Hispanic in Plaintiff's office.

15 3. Plaintiff's experience and qualifications were vast as
 16 he had extensive experience in being a Lead man as well as
 17 Quality Control. Plaintiff trained virtually all other workers
 18 that remained after he was terminated. Jose Rodriguez, George
 19 Marquez, and Sal Michele are all of Hispanic descent and
 20 discriminated against Plaintiff. Jose Rodriguez came from Tecate
 21 Mexico, and terminated white anglo americans and replaced them
 22 with Hispanic males and well as Hispanic's that he was related
 23 too. Individual's that were hired within an year before and
 24 after Plaintiff's termination were all under the age of forty
 25 and/or substantially younger than Plaintiff.

26 4. Plaintiff's employment began on or about March 17, 1994.
 27 Throughout Plaintiff's employment with Defendants, he was more
 28 than a satisfactory employee, was reliable, loyal, and was a

1 dedicated member of Defendants's team. Throughout Plaintiff's
2 tenure of employment, his performance exceeded expectations and
3 Plaintiff received many commendations as to his excellent job
4 performance. At no time prior to his termination was Plaintiff
5 ever given notice or was told that Plaintiff's position would be
6 eliminated due to any reason.

7 5. Likewise, Plaintiff was never disciplined at any time
8 during his year tenure with Defendants. Unfortunately, on or
9 about February 6, 2009, Defendants told Plaintiff he was being
10 terminated due to his job being eliminated and a reduction in
11 force. Throughout Plaintiff's tenure, Plaintiff received many
12 letters of commendation.

13 6. Plaintiff had more seniority than any other employee
14 within his Department at the time that he was terminated.
15 Plaintiff was made fun of because he did not speak or understand
16 Spanish. This was done by Jose Rodriguez. Mr. Rodriguez would
17 say in English that could barely be understood after he joked
18 with Spanish workers, "oh you can not understand Spanish, too
19 bad. You will not be here long, don't worry."

20 7. After Jose Rodriguez was hired by defendants, Plaintiff
21 complained to George Marquez of Human Resources regarding the
22 racial discrimination and the fact that Jose Rodriguez would give
23 him commands in Spanish which he could not understand. The Human
24 Resource person initially told him not to worry about it;
25 thereafter after making a second request to Human Resources, Mr.
26 Marquez told Mr. Evans that he would look into it and get back to
27 him with the results of his investigation. Mr. Marquez never
28 followed up with Plaintiff. Plaintiff also gave Mr. Marquez

1 several names to speak with regarding racial discrimination.

2 After Mr. Rodriguez was hired, Plaintiff's experienced

3 discrimination and a hostile work environment.

4 Instead of properly investigating same, Defendants acted in bad

5 faith, ignored Plaintiff's complaints and began retaliating

6 against Plaintiff. Plaintiff also called an anonymous 800 number

7 to report his complaints of discrimination.

8 8. Another employees hired after Plaintiff, and within the

9 last year of Plaintiff's employment were given Plaintiff's job

10 duties; said co-workers had been trained by Plaintiff and were

11 substantially younger than Plaintiff and/or under the age of

12 forty. Said individuals who took over Plaintiff's job and

13 responsibilities were also of Hispanic descent, were less

14 qualified, had less experience than Plaintiff, and had been

15 employed with defendants for only a short time. Plaintiff was

16 also denied promotion; in some cases, Plaintiff was denied for

17 even applying for a job.

18 9. Further, Mr. Rodriguez was allowed to conduct his own

19 personal business on company time using company resources and

20 products. Plaintiff was excluded and retaliated against by Mr.

21 Mr. Rodriguez and Mr. Marquez. The white employees under the

22 control of Jose Rodriguez were made fun of because they could not

23 speak English. Even when Plaintiff kindly asked if English could

24 be spoken to him and in front of him, Jose Rodriguez said laughed

25 and said, "Spanish is the language round here. If you do not

26 like, you should get the that fuck out of here."

27 10. Defendants, via Mr. Rodriguez took away Plaintiff's

28 office in order to force him to quit and in an attempt to

1 | humiliate him and get him to quit.

2 | 11. Plaintiff was subjected to a hostile work environment
3 | where he was not protected from 1) his superiors abuse and
4 | discrimination as well as his co-workers; 2) discrimination and
5 | retaliation based upon age and race; and 4) being constantly
6 | ignored, singled out and harassed, discriminated against and
7 | suffering adverse employment actions based upon the above. In
8 | addition, Plaintiff also suffered adverse employment
9 | actions (failure to promote) up to and including termination for
10 | exercising his rights, making well founded complaints, refusing
11 | to quit, resign and/or give in to the discrimination and
12 | harassment.

13 | 12. Defendants terminated Plaintiff even though Plaintiff's
14 | skills, knowledge, qualifications, etc. were superior to others
15 | in his department and similarly situated.

16 | 13. Plaintiff is over the age of 40 years old and is a
17 | member of a protected class. At the time of his termination,
18 | Plaintiff was fifty-seven (57) years old. In addition, the person
19 | who took over the majority of Plaintiff's job responsibilities,
20 | was less qualified, had less experience than Plaintiff, and was
21 | substantially younger than Plaintiff, less seniority, and was of
22 | Hispanic descent.

23 | 14. Plaintiff was promptly and swiftly terminated and was
24 | offered no other positions or given the chance to take other
25 | employment within any of Defendants' companies. At the time of
26 | termination, Plaintiff asked whether it was likely that he would
27 | be re-hired and asked to come back to work. Plaintiff's
28 | supervisor, stated that if he were Plaintiff, he would not wait

1 for a job from Defendants and that he, Plaintiff should not count
 2 on coming back to work with Defendants. Defendant's alleged
 3 business reason of reducing costs, eliminating Plaintiff's
 4 position, and reduction/job elimination were merely a pretext to
 5 hide a bad faith termination based upon the causes of action
 6 stated below in this complaint.

7 15. Jose Rodriguez, after taking away Plaintiff's office,
 8 further harassed Plaintiff by taking away his office and then
 9 putting Plaintiff of the manufacturing floor to do his work which
 10 involved zebra printing, wire diagrams, editing and working with
 11 the lab engineers.

12 16. Defendants terminated Plaintiff instead of other
 13 employees within Plaintiff's department. Plaintiff was the
 14 oldest employee at the Chino office in his department. Plaintiff
 15 was also the only employee who was terminated as part of the
 16 layoff in or on February 6th, 2009 in Chino. Plaintiff's job was
 17 never eliminated, and this was a lie from Defendants.

18 17. Mr. Rodriguez would speak spanish to Plaintiff, and
 19 then laugh in his face. Mr. Rodriguez told Plaintiff on one
 20 occasion that he was an old man and needed to move quicker.

21 18. Employee Lou Duhaime also complained to Human Resources
 22 about Jose Rodriguez and his discrimination against white
 23 employees. Nothing was done about this.

24 19. Plaintiff complained on a continual basis of various
 25 Labor Code violations, in addition to the discrimination stated
 26 above in this complaint and was retaliated for doing so. For
 27 example, Plaintiff complained of violation of Labor Code Sections
 28 98.6 (complain of wage violations),

1 20. The Human Resources and Plaintiffs direct supervisors,
 2 including, did nothing to protect Plaintiff from the harassment,
 3 discrimination and retaliation he suffered. In fact, the Human
 4 Resource department retaliated and discriminated against
 5 Plaintiff for exercising his rights and expressing just
 6 complaints and concerns. All complaints from Plaintiff, from
 7 late 2008 up through his termination, were ignored by
 8 Defendants (immediate supervisor as well as upper management and
 9 human resources.)

10 21. Plaintiff attempted to follow the alleged company policy
 11 in reporting claims of discrimination and harassment but was
 12 simply ignored and interfered with by Defendants in attempting to
 13 voice his concerns and follow appropriate procedure. Instead of
 14 making a good faith investigation into Plaintiff's complaints,
 15 Defendants elevated hostility by ratifying the discriminatory
 16 conduct which lead to Plaintiff's termination.

17 22. Plaintiff is and was at all times a resident of the
 18 County of Orange, the State of California and worked in same
 19 county of San Bernardino, city of Chino for Defendants during his
 20 entire tenure with Defendants.

21 23. Defendants at all times herein mentioned are entities
 22 operating as California and a foreign corporation and/or business
 23 in the City of Chino, County of San Bernardino, of the State of
 24 California. The unlawful employment practices complained of
 25 herein occurred in San Bernardino County, California.

26 24. Plaintiff is ignorant of the true names and capacities
 27 of defendants sued herein as DOES 1 through 20, inclusive, and
 28 therefore sues these Defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege their true names
2 and capacities when ascertained. Plaintiff is informed and
3 believes and thereon alleges that each of the Defendants
4 fictitiously named herein is indebted and liable to Plaintiff as
5 herein set forth.

6 25. Plaintiff is informed and believes and thereon alleges
7 that at all relevant times, except where otherwise indicated,
8 each Defendant was the agent, servant, or employee of each
9 remaining Defendant, and was at all such times, except where
10 otherwise indicated, acting within the scope and purpose of such
11 agency, and that each act of each Defendant was authorized and
12 ratified by each remaining Defendant.

13 26. As a direct and proximate result of the unlawful conduct
14 on the part of Defendants, and each of them, as alleged herein,
15 plaintiff has suffered the loss of earnings and employment
16 benefits in an amount yet unascertained, but subject to proof at
17 trial.

18 27. As a direct and proximate result of the unlawful conduct
19 on the part of Defendants, and each of them, as alleged herein,
20 plaintiff has suffered and continues to suffer injury, pain and
21 suffering, loss of self esteem, humiliation, mental anguish and
22 emotional distress, all to Plaintiff's damage in an amount to be
23 proven at trial, in excess of the threshold jurisdiction of this
24 court.

25 28. As a direct and proximate result of Defendants'
26 discriminatory conduct as described herein, Plaintiff is entitled
27 to recover general, special and other compensatory damages in
28 amounts to be proven at trial. Plaintiff is also entitled to

1 recover reasonable attorneys' fees and costs of suit as provided
2 by California Government Code Section 12965(b).

3 29. The conduct of Defendants, and each of them, as alleged
4 herein, was malicious, fraudulent, oppressive and despicable, in
5 that Defendants, and each of them, acted with full knowledge of
6 the unlawfulness of such acts, and with conscious disregard of
7 the consequence to Plaintiff, as alleged herein, and with intent
8 to harass and discriminate against Plaintiff, and in willful,
9 conscious, wanton and reckless disregard for Plaintiff's rights
10 and for the deleterious consequences and cruel and unjust
11 hardship resulting to Plaintiff. Consequently, Plaintiff is
12 entitled to exemplary and punitive damages from all defendants.

13 ADMINISTRATIVE PROCEDURES

14 30. On or about February 4, 2010, Plaintiff filed a charge
15 of discrimination with the California Department of Fair
16 Employment and Housing (DFEH) and at the same time requested a
17 right-to-sue letter. A true and correct copy of said charge was
18 served on Defendants.

19 31. On or about February 09, 2010, Plaintiff received his
20 Right to Sue Notice from the DFEH.

21 FIRST CAUSE OF ACTION

22 AGE DISCRIMINATION

23 (Against Defendants and all Does)

24 32. Plaintiff hereby repeats, re-alleges and repleads
25 paragraphs 1 through 31 and incorporates the same as though fully
26 set forth herein.

27 33. Plaintiff is a male who is over forty years of age and
28 was 57 at the time of his termination.

34. This cause of action is brought pursuant to the California Fair Employment and Practices Act, section 12940-41 of the Government Code, which prohibits discrimination against a person in the terms, conditions, or privileges of employment on the basis of the person's age, and the corresponding regulations of the California Fair Employment and Housing Commission.

35. Substantially younger employees and/or those not over the age of forty as compared to Plaintiff were not terminated and were given Plaintiff's position and job responsibilities. Other employees, with less seniority, less experience, and substantially younger than Plaintiff received more favorable treatment and were not terminated.

36. The conduct of defendants, and each of them as alleged herein, constitutes unlawful discrimination on account of age discrimination in violation of California Government Code Sections 12940-41 et seq. in that Plaintiff was singled out for differential treatment. Plaintiff was discriminated against in his employment by reason of his age.

37. At all times mentioned in this complaint, Defendants regularly employed/employs more than 100 persons.

38. None of the discriminatory or retaliating conduct of defendant(s), or any of them as alleged herein, was based upon a bona fide performance problem, legitimate business reason or occupational qualification.

39. Plaintiff believes and alleges that plaintiff's age was a substantial and determining factor in defendant employer's decision to fail to promote, harass, annoy, threaten, attempt to force Plaintiff to retire, terminate and discriminate against

1 Plaintiff.

2 40. As a direct, foreseeable, and proximate result of
3 defendants' discriminatory acts, plaintiff has suffered and
4 continues to suffer substantial losses in earnings, benefits, and
5 has suffered and continues to suffer humiliation, embarrassment,
6 mental and emotional distress, and discomfort, all to plaintiff's
7 damage in an amount in excess of the jurisdictional limit, the
8 precise amount of which will be proven at trial.

9 41. Defendant and all does committed the acts described in
10 this complaint oppressively, maliciously, and with the intent to
11 harm Plaintiff, entitling Plaintiff to an award of punitive
12 damages against defendants in an amount appropriate to punish and
13 make an example of defendants.

14 SECOND CAUSE OF ACTION

15 NATIONAL ORIGIN/RACE DISCRIMINATION

16 (Against Defendants and all Does)

17 42. Plaintiff hereby repeats, re-alleges and repleads
18 paragraphs 1 through 41 and incorporates the same as though fully
19 set forth herein.

20 43. Plaintiff is a male who is white, and is anglo-saxon.
21 Plaintiff's speaks English and cannot understand Spanish.
22 Plaintiff was made fun of by Jose Rodriguez for not speaking
23 Spanish and Jose Rodriguez made fun of Plaintiff in Spanish and
24 would speak Spanish to his face and laugh.

25 44. This cause of action is brought pursuant to the
26 California Fair Employment and Practices Act, section 12940-42 of
27 the Government Code, which prohibits discrimination against a
28 person in the terms, conditions, or privileges of employment or

1 the basis of the person's national origin, and the corresponding
2 regulations of the California Fair Employment and Housing
3 Commission.

4 45. Based upon information and belief, no white employees
5 were hire by Defendants within Plaintiff's department after Jose
6 Rodriguez was hired and Jose Rodriguez let many white employees
7 go and hired only those of Hispanic descent.

8 46. The conduct of defendants, and each of them as alleged
9 herein, constitutes unlawful discrimination on account of
10 national origin in violation of California Government Code
11 Sections 12940 and 12941 in that Plaintiff was singled out for
12 differential treatment, terminated, and deprived of his
13 employment by reason of his national origin and race, that being
14 white as was Plaintiff's race/national origin.

15 47. At all times mentioned in this complaint, Defendants
16 regularly employed more than 100 persons.

17 48. None of the discriminatory or retaliating conduct of
18 defendants, or any of them as alleged herein, was based upon a
19 bona fide performance problem or occupational qualification.

20 49. Plaintiff was at least as qualified, and based upon
21 information and belief, more qualified to perform the duties of
22 his job as any other within his department as well as those that
23 remained employed after Plaintiff was terminated who were not
24 white but of Hispanic descent.

25 50. Plaintiff believes and alleges that plaintiff's national
26 origin/race was a substantial and determining factor in defendant
27 employer's decision to terminate Plaintiff.

28 51. As a direct, foreseeable, and proximate result of

1 defendants' discriminatory acts, plaintiff has suffered and
 2 continues to suffer substantial losses in earnings, job benefits,
 3 and has suffered and continues to suffer humiliation,
 4 embarrassment, mental and emotional distress, and discomfort, all
 5 to plaintiff's damage in an amount in excess of the
 6 jurisdictional limit, the precise amount of which will be proven
 7 at trial.

8 52. Defendant and all does committed the acts described in
 9 this complaint oppressively, maliciously, and with the intent to
 10 harm Plaintiff, entitling Plaintiff to an award of punitive
 11 damages against defendants in an amount appropriate to punish and
 12 make an example of defendants.

13 THIRD CAUSE OF ACTION

14 FAILURE TO PREVENT DISCRIMINATION UNDER THE FEHA

15 (Against Defendants and all Does)

16 53. Plaintiff hereby repeats, re-alleges and repleads
 17 paragraphs 1 through 52 and incorporates the same as though fully

18 54. At all times mentioned in this complaint, Government
 19 Code section 12940(k) was in full force and effect and was
 20 binding on defendants. This subsection requires defendants to
 21 take all reasonable steps necessary to prevent discrimination and
 22 harassment from occurring. As alleged above, defendants violated
 23 this subsection by failing to take all reasonable steps necessary
 24 to prevent discrimination and harassment from occurring.

25 55. Defendant had knowledge of Plaintiff's and other
 26 employees claims of harassment and discrimination in violation of
 27 Government Code Section 12940 et seq. Nonetheless, Defendant did
 28 nothing to protect employees from offenders of the law.

1 Plaintiff rejected Defendants discrimination by complaining to
 2 his supervisor. Defendants never made a good faith investigation
 3 nor did they ever respond to, question, or interview Plaintiff in
 4 any way shape or form. Plaintiff was harassed, discriminated
 5 against and eventually terminated due to his complaints.

6 56. The Human Resource Department also did not respond in
 7 any way or advise employees after events of discrimination or
 8 hold proper training seminars on harassment and discrimination to
 9 prevent further discrimination and harassment. In short, based
 10 upon Defendants failure to take any steps to respond to
 11 Plaintiff's complaints of discrimination or to prevent
 12 discrimination and harassment from occurring in its workplace,
 13 Defendants ratified the conduct and age discrimination which led
 14 to Plaintiff's termination.

15 57. As a proximate result of defendants' conduct, Plaintiff
 16 has suffered and continues to suffer humiliation, emotional
 17 distress, and mental and physical pain and anguish, all to his
 18 damage in a sum according to proof.

19 58. Defendants' conduct as described above was willful,
 20 despicable, knowing, and intentional; accordingly, plaintiff
 21 seeks an award of punitive and exemplary damages in an amount
 22 according to proof.

23 59. Plaintiff has incurred and continues to incur legal
 24 expenses and attorney fees. Plaintiff is presently unaware of
 25 the precise amount of these expenses and fees and prays leave of
 26 court to amend this complaint when the amounts are more fully
 27 known.

28 / / /

FOURTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against Defendants and all Does)

60. Plaintiff hereby repeats, re-alleges and repleads paragraphs 1 through 59 and incorporates the same as though fully set forth herein.

61. Defendant's actions as herein alleged were outrageous and outside the scope of acceptable behavior in a civilized society.

62. In doing the acts herein alleged, defendants intended to cause, or acted with a reckless disregard of the probability of causing, plaintiff to suffer emotional distress.

63. As a proximate result of defendants' actions as herein alleged, Plaintiff suffered, and continues to suffer, severe mental and emotional distress, all to his damage in an amount to be proven at trial but in excess of the jurisdictional threshold of this court.

64. In doing the acts herein alleged, Defendants knew that their actions were unlawful, but nonetheless committed such acts maliciously, fraudulently, oppressively, and despicably, and with the wrongful intention of injuring plaintiff, with an improper and evil motive amounting to malice, and in conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of punitive damages against defendants, and each of them, in an amount to be determined by this court.

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—for the month—

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1 FIFTH CAUSE OF ACTION

2 TERMINATION IN VIOLATION OF PUBLIC POLICY

3 (Against All Defendants and all Does)

4 65. Plaintiff hereby repeats, re-alleges and repléads
5 paragraphs 1 through 64 and incorporates the same as though fully
6 set forth herein.

7 66. Plaintiff alleges that Defendants termination of
8 Plaintiff was in violation of the public policy as expressed both
9 in California Constitution Article I, section 8 which prohibits
10 discrimination against employees and Section 12940 et seq. of the
11 Government Code. The above described conduct of Defendants also
12 constitutes age discrimination, harassment and retaliation, and
13 wrongful termination of Plaintiff in violation of public policy
14 embodied in the FEHA.

15 67. As a direct, foreseeable, and proximate result of
16 defendant employer's wrongful termination of Plaintiff in
17 violation of the public policy of the State of California,
18 Plaintiff has lost and will continue to lose income and benefits,
19 and has suffered and continues to suffer humiliation,
20 embarrassment, mental and emotional distress, and discomfort all
21 to Plaintiff's damage in an amount in excess of the
22 jurisdictional limit, the precise amount of which will be proven
23 at trial.

24 68. Because the acts taken toward Plaintiff were carried out
25 by managerial employees acting in a deliberate, cold, callous,
26 malicious, oppressive, and intentional manner in order to injure
27 and damage Plaintiff, Plaintiff requests the assessment of
28 punitive damages against defendant employers in an amount

1 appropriate to punish and make an example of defendants.

2 69. The acts, conduct and negligence of defendants caused
3 Plaintiff to suffer emotional distress and, as a result thereof,
4 Plaintiff has suffered damages as set out in this complaint in
5 amounts to be proven at the time of trial.

6 REQUEST FOR JURY TRIAL

7 Plaintiff requests a trial by jury.

8 PRAYER FOR RELIEF

9 WHEREFORE, Plaintiff prays judgment against defendants, for
10 each cause of action, as follows:

11 1. For general and compensatory damages in an amount
12 according to proof;

13 2. For mental and emotional distress damages on each cause
14 of action;

15 3. For exemplary and punitive damages in an amount
16 appropriate to punish defendants and set an example for others as
17 to all causes of action;

18 4. For an award of interest, including prejudgment interest,
19 at the legal rate;

20 5. For an award of attorney fees;

21 6. For costs of suit herein incurred;

22 7. For a trial by jury; and

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8. For such other and further relief as the court may deem just and proper,

Respectfully submitted,

Dated: February 7, 2011

LAW OFFICES OF ERIC V. LUEDTKE

By:

Eric V. Luedtke, Esq.
Attorneys for Plaintiff,
Tom Evans